

§ 1021.214 Adjudicatory proceedings.

(a) This section applies to DOE proposed actions that involve DOE adjudicatory proceedings, excluding judicial or administrative civil or criminal enforcement actions.

(b) DOE shall complete its NEPA review (if otherwise required by this part) before rendering any final adjudicatory decision. If an EIS is required, the final EIS will normally be completed at the time of or before final staff recommendation, in accordance with 40 CFR 1502.5(c).

(c) DOE shall include any relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

§ 1021.215 Applicant process.

(a) This section applies to actions that involve application to DOE for a permit, license, exemption or allocation, or other similar actions, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) The applicant shall:

(1) Consult with DOE as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that DOE may require to be submitted as part of, or in support of, the application;

(2) Conduct studies that DOE deems necessary and appropriate to determine the environmental impacts of the proposed action;

(3) Consult with appropriate Federal, state, regional and local agencies, American Indian tribes and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

(4) Notify DOE as early as possible of other Federal, state, regional, local or American Indian tribal actions required for project completion to allow DOE to coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate;

(5) Notify DOE of private entities and organizations interested in the pro-

posed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2); and

(6) Notify DOE if, before DOE completes the environmental review, the applicant plans to take an action that is within DOE's jurisdiction that may have an adverse environmental impact or limit the choice of alternatives. If DOE determines that the action would have an adverse environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1506.1(a), DOE will promptly notify the applicant that DOE will take appropriate action to ensure that the objectives and procedures of NEPA are achieved in accordance with 40 CFR 1506.1(b).

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide.

(d) DOE shall begin its NEPA review (if otherwise required by this part) as soon as possible after receiving an application described in paragraph (a) of this section, and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). At DOE's option, an applicant may prepare an EA in accordance with 40 CFR 1506.5(b). If an EIS is prepared, the EIS shall be prepared by DOE or by a contractor that is selected by DOE and that may be funded by the applicant, in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c), as discussed in § 1021.312(b)(4) of this part. DOE shall complete any NEPA documents (or evaluation of any EA prepared by the applicant) before rendering a final decision on the application and shall consider the NEPA document in reaching its decision, as provided in § 1021.210 of this part.

§ 1021.216 Procurement, financial assistance, and joint ventures.

(a) This section applies to DOE competitive and limited-source procurements, to awards of financial assistance by a competitive process, and to joint ventures entered into as a result

of competitive solicitations, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part. Paragraphs (b), (c), and (i) of this section apply as well to DOE sole-source procurements of sites, systems, or processes, to noncompetitive awards of financial assistance, and to sole-source joint ventures, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) When relevant in DOE's judgment, DOE shall require that offeror's submit environmental data and analyses as a discrete part of the offeror's proposal. DOE shall specify in its solicitation document the type of information and level of detail for environmental data and analyses so required. The data will be limited to those reasonably available to offerors.

(c) DOE shall independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(d) For offers in the competitive range, DOE shall prepare and consider an environmental critique before the selection.

(e) The environmental critique will be subject to the confidentiality requirements of the procurement process.

(f) The environmental critique will evaluate the environmental data and analyses submitted by offerors; it may also evaluate supplemental information developed by DOE as necessary for a reasoned decision.

(g) The environmental critique will focus on environmental issues that are pertinent to a decision on proposals and will include:

(1) A brief discussion of the purpose of the procurement and each offer, including any site, system, or process variations among the offers having environmental implications;

(2) A discussion of the salient characteristics of each offeror's proposed site, system, or process as well as alternative sites, systems, or processes;

(3) A brief comparative evaluation of the potential environmental impacts of the offers, which will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects that cannot be avoided, areas where important en-

vironmental information is incomplete and unavailable, unresolved environmental issues and practicable mitigating measures not included in the offeror's proposal; and

(4) To the extent known for each offer, a list of Federal, Tribal, state, and local government permits, licenses, and approvals that must be obtained.

(h) DOE shall prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The synopsis will not contain business, confidential, trade secret or other information that DOE otherwise would not disclose pursuant to 18 U.S.C. 1905, the confidentiality requirements of the competitive procurement process, 5 U.S.C. 552(b) and 41 U.S.C. 423. To assure compliance with this requirement, the synopsis will not contain data or other information that may in any way reveal the identity of offerors. After a selection has been made, the environmental synopsis shall be filed with EPA, shall be made publicly available, and shall be incorporated in any NEPA document prepared under paragraph (i) of this section.

(i) If an EA or EIS is required, DOE shall prepare, consider and publish the EA or EIS in conformance with the CEQ Regulations and other provisions of this part before taking any action pursuant to the contract or award of financial assistance (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). If the NEPA process is not completed before the award of the contract, financial assistance, or joint venture, then the contract, financial assistance, or joint venture shall be contingent on completion of the NEPA process (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). DOE shall phase subsequent contract work to allow the NEPA review process to be completed in advance of a go/no-go decision.